IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.1269 OF 2006

Chudaman Shenpadu More. ...Petitioner.

Vs.

The Chief Executive Officer,
Zilla Parishad, Nasik. ...Respondent.

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Mr. M. M. Sathaye for the Petitioner.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 10, 2006.

P.C.:

By an order dated 22nd December 2005, the 1st Adhoc Additional District Judge at Malegaon dismissed an appeal preferred by the Petitioner against an order of eviction passed under the Bombay Government Premises (Eviction) Act, 1955. The premises in question (Quarter No.7) belongs to the Panchayat Samiti at Malegaon and came to be allotted to the Petitioner on 24th December 1979 since at the relevant time, the Petitioner was holding the office of an Extension Officer in the Panchayat Samiti at Malegaon. The Petitioner retired from service on 28th February 1990. He has neither handed over vacant possession of the quarters to the Panchayat Samiti, nor has he paid any amount of

compensation for his use and occupation. On 5th February 2002 and 23rd September 2002, an order of eviction came to be passed against the Petitioner. The Competent Authority also directed the Petitioner to pay an amount of Rs.1,42,946/- as and by way of damages for wrongful use and occupation. In so far as the order of eviction is concerned, there is absolutely no infirmity therein. The Petitioner was in occupation of service accommodation which was allotted to him by the Panchayat Samiti in his capacity as an officer of the Samiti and upon his retirement, he was bound and liable to vacate. The Petitioner has failed to do so for over 15 years since his retirement. On behalf of the Petitioner, it has also been urged that the Appellate Court had framed a specific issue as to whether the State was entitled to recover damages for rent for the period during which the Petitioner had remained in unauthorised use and occupation. The case of the Petitioner is that in ground 'k' of the Memo of Appeal, it was submitted that the Respondent had not come forth with the case that he was entitled to recover an amount of Rs.1,42,946/- from him. Ground 'k' of the Memo of Appeal reads as follows :

> “(k) It is material to note that in fact it was not the case of respondent that they are entitled to recover an amount

of Rs.1,42,946.00 from appellant. Still the lower court has passed an order that respondent may recover Rs.1,42,946.00 from appellant."

At the hearing of these proceedings, it has been submitted on behalf of the Petitioner that in the application filed on behalf of the Respondent before the Competent Authority, there was no prayer for the recovery of damages and that the consequential order of recovery of damages cannot be sustained. Counsel appearing on behalf of the Petitioner has not produced a copy of the application filed by the Respondent before the Competent Authority, nor has it been annexed to the proceedings. The submission, however, that has been urged is that though a specific point was taken before the Additional District Judge in the course of the statutory appeal in regard to the correctness of the order requiring the Petitioner to pay damages quantified at Rs.1,46,946/-, that has not been specifically dealt with in the course of the impugned order. If that be so, the only appropriate and proper course of action is for the Petitioner to move the Learned Additional District Judge in review proceedings on the ground that a submission which has been urged has not been dealt with or considered. In these

circumstances, the impugned order of the Additional District Judge, Malegaon is affirmed in so far as the decree for eviction is concerned. In so far as the contention of the Petitioner in regard to recovery of damages for wrongful use and occupation of the premises is concerned, it would be open to the Petitioner, if so advised, to file an application for review before the First Appellate Court. The Petitioner would be at liberty to do so within a period of four weeks from today. It is, however, clarified that the pendency of the review shall not operate to stay the execution of decree for eviction if the Petitioner fails to hand over possession in compliance with the orders passed by the Additional District Judge.

The petition is disposed of in the aforesaid terms.

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